# Building Debt While Doing Time:
## Child Support and Incarceration

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Although judicial discretion in child support cases has narrowed with the adoption of mathematical guidelines to determine appropriate child support awards and their modification,[1] judges continue to play an important role in determining the circumstances sufficient to justify revision of a child support order. They disagree as to whether incarceration is a voluntary or involuntary act and whether incarceration is thus a basis for modification. While courts in some states have ruled that incarceration is a sufficient justification to warrant modification of the child support obligation, courts in other states have ruled that incarceration is no justification, while still other states hold that it is partial justification and should be one of many factors to consider.[2]

These different approaches have tremendous practical significance. Since federal law prohibits retroactive forgiveness of child support arrearages, rulings on incarceration as a basis for modification determine the amount of arrears that incarcerated parents will be required to pay upon their release. More to the point, excessive arrears and the enforcement policies they trigger can feed resentment toward the child support system, discourage voluntary payment of current support, and possibly drive paroled and released parents away from legitimate employment and into the underground economy.

Given the high degree of discretion that judges have in cases involving the child support status of incarcerated parents, the judiciary must be aware of recent research on the topic and the implications of their decisions for public policy. This article explores the debate on how the court should treat child support obligations of incarcerated parents and summarizes findings from a number of research and demonstration projects with incarcerated and paroled parents by child support enforcement (CSE) and criminal justice agencies (DOC). At the end of 2002, Bureau of justice statistics reported that a record 2.1 million people were in federal, state, or local custody. During the coming decade, approximately 600,000 inmates will be released from state and federal facilities on an annual basis. As of December 31, 2001, approximately 2.7 percent of the U.S. adult population—5.6 million people—either were in prison or had been incarcerated at one time. That number is projected to increase to 7.7 million by 2010.[3]

Many of these individuals are parents involved with the child support enforcement system. Their financial contributions could make an important difference for their families. A recent Urban Institute study showed that child support represented 26 percent of income for families below the poverty line and 30 percent for families that leave welfare.[4] These statistics underscore the importance of developing policies that encourage legitimate employment and regular payment behaviors. Fairness is key. Estimates indicate that 30 percent to 40 percent of nonpaying fathers have annual incomes of less than $6,500, and 70 percent of child support arrears are owed by noncustodial parents who earn $10,000 per year or less.[5] A Department of Health and Human Services report issued in February 2002 stated that child support orders for noncustodial parents with earnings below the poverty line averaged 69 percent of reported earnings, which is far above the 40 percent average and clearly in excess of what federal law permits (50 percent to 65 percent).[6] In contrast, California child support debtors with net incomes of more than $70,000 had child support orders that represented only 8 percent of their net income.[7]

### The Debate

Two recent state supreme court opinions highlight the debate about the appropriate treatment of child support obligations while parents are in prison and following their release. On May 30, 2003, the Supreme Court of Pennsylvania reaffirmed an order denying a petition filed by a father incarcerated for sexually assaulting his daughter, to modify or terminate his child support order of $100 per week. As reasons for the modification request, he cited his imprisonment and inadequate earnings, which amounted to 4 cents per hour, for a monthly salary of approximately $50.[8] The decision overturned long-standing Pennsylvania case law holding that an incarcerated person did not have a duty to pay support.

On June 25, 2003, the Supreme Court of Wisconsin reached a similar decision when it upheld a circuit court's refusal to modify or suspend an incarcerated

## Common Judicial Approaches to Assessing the Effects of Incarceration on Support Obligations

| **The No Justification Approach:** Incarceration is insufficient to justify elimination or reduction of an existing child support obligation. | **The Complete Justification Approach:** Incarceration is sufficient to justify eliminating or reducing an existing child support obligation. | **The One Factor Approach:** Incarceration is one factor along with other factors to consider when determining whether to eliminate or reduce an open support obligation. |
|---|---|---|
| Arizona | California | Alabama |
| Arkansas | Connecticut**** | Alaska |
| Delaware | District of Columbia*** | Colorado |
| Florida*** | Idaho | Illinois |
| Indiana | Maine*** | Iowa |
| Kansas | Maryland | Missouri |
| Kentucky | Massachusetts*** | New Mexico |
| Louisiana | Michigan | Rhode Island*** |
| Maryland | Minnesota | Texas |
| Montana | North Carolina* | Nebraska* |
| Nebraska* | Oregon | Wisconsin |
| New Hampshire† | Tennessee*** | |
| New York | Washington | |
| North Dakota | Wyoming* | |
| Ohio | | |
| Oklahoma | | |
| Pennsylvania** | | |
| South Carolina*** | | |
| South Dakota*** | | |
| Utah*** | | |
| Virginia*** | | |

Note: The table is based on a compilation of information from cases, such as the classification cited in *Yerkes v. Yerkes,* No. J-95-2002 slip op. at 5–6 (Pa. Feb. 26, 2002), and reviews of cases in *In re Marriage of Thurmond,* 962 P.2d 1064, 1068–72 (Kan. 1998) and *Halliwell v. Halliwell,* 741 A.2d 638, 644–45 (N.J. Super. Ct. App. Div. 1999).

* Based on a discussion of cases and statutes by Frank J. Wozniak, Annotation, *Loss of Income Due to Incarceration as Affecting Child Support Obligations,* 27 A.L.R. 540 ann. 5 (1995).

** Based on *Yerkes v. Yerkes,* No. J-95-2002 (Pa. Feb. 26, 2002).

*** Child support agency actions based on a survey of State IV-D directors compiled by Diane Fray, Connecticut's IV-D director, Dec. 9, 2001; rev. Sept. 15, 2002, and Oct. 28, 2002.

**** Based on Conn. Pub. Act No. 03-258 for House Bill No. 6518, effective Oct. 1, 2003.

† The New Hampshire child support agency reports that it pursues modification in public assistance cases and seeks imposition of statutory minimum obligations of $50 per month. In nonpublic assistance cases, the obligor would pursue a court modification. *See* ***.

father's child support order. The order required him to pay $543 per month to support his three children while he served the remainder of his three-year sentence for driving under the influence of alcohol and cocaine possession. During his sentence, the petitioner, who earned $60 per month working at the prison, would have accumulated more than $25,000 in back arrearages, not including interest.[9]

Central to these cases is the debate whether incarceration is analogous to voluntary unemployment, which makes the noncustodial parent ineligible for modification. Justices in both the Pennsylvania and Wisconsin courts upheld lower court rulings that incarcerated parents are responsible for disadvantaged financial conditions that result from their own criminal action, because imprisonment is a foreseeable result of criminal activity. Both decisions emphasized the primacy of child support obligations and affirmed the court's right to refuse a modification based on the nature of the underlying offense and the parent's moral culpability. In its conclusion, the Pennsylvania court ruled that incarceration alone is not a "material and substantial change in circumstances" providing sufficient grounds for modification or termination of child support, while the Wisconsin court found that incarceration by itself neither mandates nor prevents a modification and is one factor that should be considered in a case-by-case determination of modification requests.

The two decisions highlight how state courts are significantly divided over the following questions:

- Does incarceration justify the reduction or suspension of a child support obligation?
- Can arrears accrued during incarceration be compromised?
- Should a support order be initially imposed while a parent is in prison?[10]

Some courts have determined that where there is no evidence of intentional avoidance of child support, an incarcerated parent is entitled to a reduction, but others contend that modifications are inappropriate where a parent voluntarily engaged in criminal activity and consequently experienced a reduction in financial ability to pay. As the Supreme Court of Montana noted, "Father should not be able to escape his financial obligation to his children simply because his misdeeds have placed him behind bars. The meter should continue to run."[11] States like Alaska, on the other hand, have refused to equate incarceration with voluntary unemployment and argue, "In stark contrast to parents who consciously choose to remain unemployed, jailed parents rarely have any actual job prospects or potential income [and] cannot alter their employment situation."[12]

Nevertheless, the chief justice of the Wisconsin Supreme Court filed a dissent to the majority opinion in *Dumler* and was joined by another justice. They argued that once the court determines a parent's incarceration is not due to a failure to pay child support, the court should ignore the prisoner's criminal conduct and focus instead on the

standard measures considered in a modification request: whether the parent is able to pay child support and how these measures are affected by incarceration. Because the plaintiff in *Dumler* went from earning almost $2,000 per month to earning about $45 per month while incarcerated; will accumulate arrearages of $25,000 by the end of his sentence; and has little likelihood of paying off this amount within a reasonable time after release, the justices contended there was a "substantial change of circumstances" that justified revision of the child support order. They also cited strong public policy reasons for modification, including "an insurmountable amount of arrearages" that might discourage the inmate from future payments or honest work with paychecks that could be garnisheed. They concluded, "Child support orders that are beyond a noncustodial parent's ability to pay are not in the best interests of the child."[13]

## The Research Findings

A number of recent research findings address the issues confronting judges who must set, enforce, and perhaps modify the child support orders of incarcerated parents. Some of the key findings are reviewed below.

- **Most inmates are parents, many of whom have child support obligations that far exceed their capacity to pay.** In 1999 more than half of male inmates (55 percent in state facilities and 63 percent in federal facilities) were parents of children under eighteen years old.[14] Although we lack national data, two state studies suggest that many of these parents are part of the CSE system. For example, a 2001 study in Massachusetts found that 21.7 percent of inmates under the jurisdiction of the DOC and 22.5 percent of inmates within the county corrections system were part of the child support caseload.[15] A 2001 match of data maintained by the DOC and the Colorado CSE found that 26 percent of inmates in state prison facilities and 28 percent of parolees were involved with the child support system.[16]

Child support order amounts are based on the earnings of noncustodial parents (in some states, on the earnings of both parents) at the time the order is established. If the noncustodial parent is unemployed or cannot be located, the order amount is based on the minimum wage for forty hours per week. The average monthly child support owed by 973 parents with orders in Massachusetts state prisons in 2001 was $198 per order, or $227 across all orders for those with children by different women.[17] A 2001 study of 213 incarcerated parents with orders in Colorado found that the average monthly amount owed, including the amount due toward arrears, was $269.[18] Not surprisingly, inmates are unable to pay these amounts. For example, in Massachusetts prisons, an inmate may earn as little as $1 daily, while Colorado inmates typically earn 25 cents to $2.50 per day.

- **Without modification, child support arrearages will grow significantly while parents are in prison.** Prevention may be the only way to effectively address arrears levels, which are not subject to retroactive modification except when a state makes arrangements to compromise the arrears owed to the state[19] or when the state is satisfied that the custodial parent agrees with any changes in the arrears due to the family. A recent study of 650 incarcerated parents with child support orders in Massachusetts found that the parents enter prison owing an average of $10,543 in unpaid child support. If they remain in prison until their release date and their orders remain at preincarceration levels, they will accumulate another $20,461 in child support debt, plus 12 percent interest ($6,254) and 6 percent penalty charges ($3,128).[20] A group of Colorado studies confirms the Massachusetts research. A study of 213 Colorado inmates with child support orders showed that, upon entering prison, the inmates owed an average of $10,249 for unpaid child support.[21] A study of 350 parolees showed they had average balances of $16,651.[22] This suggests that the average Colorado inmate with a child support order experiences a 63 percent increase in arrears balance while in prison.

Incarceration is an important factor in explaining child support arrearages. A 2001 Colorado study found that collectively, individuals for whom a mention of incarceration was noted in the child support case record owed an estimated $212,388,958—about 18 percent of total Colorado child support arrears.[23] A Washington state study found that 30.6 percent of cases with arrears of $500 or more and no payment activity during a six-month period involved noncustodial parents with prison records.[24]

- **It is difficult to identify and communicate with incarcerated parents about their child support obligations and options.** Some states electronically match the DOC and CSE agency caseloads on a regular basis using common identifiers such as social security numbers and birth dates (e.g., Colorado, Illinois, New York, Texas, and Washington); and several match with state Parole Boards (e.g., Florida, Massachusetts, and Missouri). Most states, however, have no systematic way of identifying inmates who have child support obligations. Protocols for communicating with incarcerated parents about child support are even more rare and fraught with obstacles. A Colorado effort to notify 213 incarcerated parents by mail about their child support status and invite them to apply for a review and adjustment found that 41 percent did not respond or could not be located due to mobility within the prison system.[25] And staff members at a Texas project to address inmate child support issues experienced great difficulty clearing security and gaining access to targeted inmates during scheduled program hours.[26]

- **The review and adjustment process is cumbersome, and responses to inmate requests are highly variable.**

No state automatically modifies an obligor's child support order when the parent enters prison—either the noncustodial parent or the custodial parent must request a review and adjustment. At a minimum, this involves completing a written application and a financial affidavit and mailing them to the appropriate CSE agency. Those with multiple cases might need to involve different agencies within the same state or across state lines. The process is lengthy and cumbersome—it took an average of ninety-four days for modification requests filed by Colorado inmates to be processed in three counties that participated in a Colorado demonstration project dealing with prison modifications. More to the point, nearly half of the requests were still pending when the six-month project ended.[27]

Responses to inmate modification requests are highly variable. Depending on the order, the modification is handled by the local or state CSE agency or is forwarded to the court. At this point, the fate of the request may depend on existing policies of the court or agency for determining eligibility. Indeed, it is not out of the question for cellmates in a prison to receive different responses to identical modification requests, or for a single individual with multiple orders to have one modified and another denied. Only a few states have passed laws or administrative rules that explicitly address how to deal with incarcerated obligors and provide greater uniformity.[28]

- **Paroled and released offenders face substantial child support obligations and stiff enforcement actions that may affect successful reentry.** Inmates typically leave prison with no savings or assets, limited job training and work experience, and a host of barriers to employment.[29] For example, a survey of parolees in California reported that roughly 85 percent were chronic substance abusers, half were functionally illiterate, 18 percent had psychiatric problems, and between 70 percent and 90 percent were unemployed.[30] On the outside, they may face bans on the receipt of public assistance and food stamps, limited eligibility for low-income housing, restricted access to substance abuse or mental health treatment, and employment prohibitions.[31] A recent experimental study using matched pairs of individuals with and without criminal records to apply for actual entry-level jobs documented that paroled or released offenders faced employer biases that severely limited their employment opportunities.[32] A comprehensive statutory and regulatory analysis showed that they encounter a host of legal restrictions that bar them from a broad range of occupations and professions.[33]

Child support obligations compound the employment and financial problems that incarcerated parents face. For example, nearly half of the 350 parolees who visited the Work and Family Center, a reentry program in Denver, Colorado, between August 1999 and March 2001 were unemployed; those who worked full-time earned an average $7.39 per hour. Based on order levels set before they went to prison, these parents owed an average $295 per month for child support and had arrears balances between $168 and $111,622 that averaged $16,651, half of which was owed to the custodial parent and half to the state for welfare that had been paid to their children. In addition to their child support obligations, paroled and released parents typically were required to pay restitution and to obtain substance abuse treatment, counseling, and anger management classes—interventions that can cost up to $60 per hour for each category.[34]

As a result of the Parental Responsibility and Work Opportunity Reconciliation Act of 1996, parents who fail to pay child support face a host of new, aggressive enforcement actions.[35] All employers must report new hires within twenty days, and the information is matched, first locally and then nationally, to identify parents who owe child support anywhere in the nation. Parents who are matched in the Federal Case Registry of CSOs may have up to 65 percent of their take-home pay automatically garnisheed. They may also have their driver's license and/or state-issued professional license suspended and be reported as delinquent on their credit reports. Those with child support delinquencies may experience automatic seizures of their bank accounts and any other asset or income they possess, including savings accounts accrued for reentry. In some states, payment of child support is a condition of parole, with nonpayment theoretically leading to the noncustodial parent's return to prison for parole violation. Some prisoner advocates and reentry program personnel fear that these policies may drive paroled and released parents away from their families and legitimate employment.[36]

## Programs to Address the Problems

Some states have started to address the above problems with programs like the following:[37]

- **Improving communications with incarcerated parents:** CSE agencies in Massachusetts, Minnesota, Oregon, and Washington make general child support presentations to inmates as part of processing when they enter prison. During the sessions, they tell parents who have orders how to request a review and modification. Three of these states have developed videos on child support for the sessions so that a CSE employee does not have to be present—a factor that will become only more salient as CSE budgets and staffing levels continue to contract. Massachusetts has a full-time CSE employee at the state DOC reception facility who makes presentations to new inmates and meets individually with parents. The sessions identified many parents in the caseload who needed paternity and child support orders established, case errors corrected, requests for modification processed, and information about their child support cases.

New York CSE workers train DOC correctional counselors and staff in

## Examples of State Policies and Legislation Regarding Child Support Obligations for Incarcerated Parents

**Arizona:** In 2000 the state approved legislation allowing the court, upon petition from the noncustodial parent (NCP), to suspend the imposition of interest on arrears of an obligor during time spent in prison.[1]

**Colorado:** In 2000 the state enacted legislation permitting child support enforcement (CSE) agencies to issue a notice of administrative lien and attachment to obligors in state prison facilities and to collect monthly up to 20 percent of their prison bank accounts.[2] At the same time, the state passed a second bill giving criminal justice agencies (DOCs) a vehicle for appropriating funds from inmates' bank accounts to pay toward their child support obligations.[3]

**Connecticut:** In 2003 legislation stated that for incarcerated or institutionalized NCPs, the court must establish an initial order for current support or modify an existing order, upon request, based upon the obligor's present income in accordance with the state's child support guidelines.[4]

**Iowa:** The state follows a procedural directive that modification requests of incarcerated obligors are to be based on current income and assets rather than the notion that incarceration is a voluntary reduction of income.[5] This directive resulted from a 1998 Iowa Supreme Court decision that enforcing an original child support obligation amount of an incarcerated obligor would create "an insurmountable burden" on that person.[6]

**Massachusetts:** In 2002 the state developed a procedure for incarcerated NCPs whereby the child support agency (DOR) assists parents with filing modification requests while in prison. DOR files the request with the court, but it is typically not acted upon until the parent is released and contacts DOR, at which point the court may modify the order back to the date of the request or any other date, or choose not to modify at all.

**Minnesota:** In 2001 the state passed legislation allowing the court to retroactively modify a child support obligation, including interest accrued, if "the party seeking modification was . . . incarcerated for an offense other than nonsupport of a child . . . and lacked the financial ability to pay the support ordered."[7]

**North Carolina:** A statute allows a child support order to be suspended with no arrears accruing "during any period when the supporting party is incarcerated, is not on work release, and has no resources with which to make the payment."[8]

**Ohio:** In 1997 the state passed a law requiring that 25 percent of "any money earned by a prisoner in a prison or jail who is an obligor in default under a child support order . . . shall be paid to the [CSE] agency for distribution . . ."[9]

**Oregon:** Under an administrative rule, when an incarcerated obligor confined for at least six consecutive months with a monthly gross income of less than $200 requests a modification, the CSE agency shall presume the obligor has zero ability to pay support and will modify the order to $0.[10] The agency may satisfy assigned arrears if the paying parent is experiencing substantial hardship.[11] Sixty days after the inmate is released, the child support order automatically reverts to its preincarceration level. In an effort to help inmates create savings accounts, the Oregon CSE also exempts inmate release accounts from withholding or garnishment up to $2,000.

**Virginia:** In 2000 the state approved an amendment exempting from the presumptive minimum child support obligation of $65 "parents unable to pay child support because they lack sufficient assets . . . and who, in addition . . . are imprisoned with no chance of parole."[12]

### Endnotes

1. ARIZ. REV. STAT., § 8, 25–327(D).
2. CRS 26-13-122.5.
3. CRS 16-18.5-106.
4. Conn. Pub. Act No. 03–258.
5. Iowa Bureau of Collections Procedural Directive No. 98-28.
6. *In re marriage of Walters,* 575 N.W.2d 739 (Iowa 1998).
7. MINN. STAT. 2001 §§ 518.64, 548.091.
8. N.C. GEN. STAT. 50-13.10(d).
9. OHIO REV. CODE §§ 3113.16, 5145.16.
10. Or. Admin. R. 461-200-3300.
11. Or. Admin. R. 461-200-6120.
12. CODE OF VA. § 20-108.2.

prerelease programs so they can assist inmates when child support problems arise. Minnesota CSE staff set up booths at transition fairs held at medium-security facilities for inmates in the prerelease program, at which they provide general information about child support and phone numbers and addresses of county CSE offices. Colorado developed and distributed to prison libraries and to educators a handbook on custody and child support issues for incarcerated parents; it includes relevant information and forms to file for various actions. And Indiana and Missouri added child support information to the parenting and relationship-skills classes that are offered in prison settings.

- **Expediting modification requests filed by incarcerated parents:** As part of demonstration and evaluation projects funded by the federal Office of Child Support Enforcement (OCSE), Massachusetts and Texas are experimenting with ways to streamline the review and adjustment process for incarcerated obligors and to make downward adjustments to child support orders. For example, Massachusetts tries to avoid the costs of transporting inmates to and from, or arranging video and telephone participation for, court hearings by encouraging them to work with the CSE agency upon release. CSE personnel who visit prisons inform inmates about the option to submit a modification application and help them complete the paper work. The agency files the application with the court but does not request a hearing until the noncustodial parent contacts

the agency following release. At the hearing the agency recommends to the court that the order be modified to reflect the current ability to pay support and that both the order amount and arrears be adjusted back to the date of the modification request.

Texas CSE workers visit several state prisons to conduct information sessions about child support, answer case-specific questions, and assist with processing modification requests more quickly. Presently the Texas CSE agency may adjust interest charged on child support arrears downward from 12 percent to 6 percent, although order levels may not be modified below $165 per month for one child (the minimum order for those who work 40 hours per week and earn the minimum wage).

- **Including information on child support in prerelease programs:** CSE agencies in Illinois and Washington, using demonstration and evaluation grants funded by the federal OCSE, are testing ways to collaborate with state prerelease programs to enhance the reintegration process for parents. Illinois CSE focuses on introducing child support case management services to two Illinois DOC adult transition centers (ATCs). Project staff have added child support presentations to ATC educational services, referred NCPs residing at the ATCs to family reintegration services, and initiated reviews and downward modifications of orders so they track with the parents' employment status when they leave the ATCs and reenter society.

Through the use of videos, brochures, and user-friendly forms, Washington CSE encourages incarcerated parents to seek modification of their orders while in prison. Upon release, obligors who qualify are referred to welfare-to-work job programs. Additionally, parents with arrears accrued during incarceration are informed of the option to seek relief from child support debt owed to the state through the "conference board" process, a negotiation and grievance procedure established by the Washington CSE. The CSE, the DOC, and Corrections Clearinghouse, a reentry program, work with participants to develop manageable payment plans for child support and arrears. The goals of the project are to establish or modify child support orders to fit the ability to pay, to increase the employment rate of ex-offenders, and to use appropriate CSE interventions that lead to employment rather than recidivism.

- **Offering ex-offenders assistance with employment and child support:** Although most of the research conducted in the 1970s on employment programs for ex-offenders concluded that "nothing works,"[38] more recent studies suggest that the programs increase employment and earnings. For example, Chicago's Safer Foundation reported that 59 percent of program participants found work and remained on the job for at least thirty days during the fiscal year ending June 30, 1996. New York City's Center for Employment Opportunities reported an average placement rate of 70 percent during 1992 and 1996, with 60 percent still on the same job after three months. Project RIO in Texas cites as evidence of its effectiveness the fact that almost 74 percent of clients who used its employment services found jobs and experienced reduced recidivism rates.[39]

## Denver's WFC Experience

A six-month evaluation of 350 paroled and released offenders who visited Denver's Work and Family Center (WFC) adds to the literature on comprehensive reentry programs and their promise to promote prosocial behaviors. WFC is a voluntary, multiservice program. During the first two years of its operation, it offered employment assistance and services for child support and family reintegration in one setting. According to the report, rates of employment rose for those who visited the WFC from 43 percent to 71 percent, and average quarterly earnings among employed clients increased from $3,178 to $3,853. Child support payments were higher as well. On average, parents served at the WFC paid 39 percent of what they owed in child support, compared to 17.5 percent paid during the six months before utilizing the program. Those paying no child support dropped from 60 percent to 25 percent. Although these payment rates are far from perfect, they are comparable to those observed for low-income noncustodial parents in other programs that offer help with employment and child support. As in other programs for low-income noncustodial parents, the increases in child support payments were directly related to new employment activity and automatic wage withholding for new hires.[40]

In addition, WFC clients were returned to prison in lower numbers than those reported for all DOC inmates. Among newly released clients who were out for about a year, the rate of return stood at 28.6 percent. The DOC's one-year recidivism rate was 40 percent in 1999. The program seems to have succeeded due to the following factors:

- **Offering information:** Given the size of child support obligations, it is not surprising that child support assistance was the number-one form of help requested by 350 paroled parents who visited the WFC. Fully 69 percent expressed an interest in receiving child support help, and two-thirds characterized the intervention with the child support specialist as "very helpful."[5] The most common form of assistance was an in-person explanation of parents' child support situations. Many low-income noncustodial parents have had no contact with the child support agency and frequently are misinformed about their obligations and unaware of the consequences they face if they fail to pay. As a result of the program, about half the WFC clients had wage-withholding actions initiated, and half also benefited from responsive child support actions designed to make child support obligations more manageable, such as corrections of case errors discovered in the course of a one-on-one review, reduction of the monthly amount paid

toward child support arrears, suspension of automated enforcement activity, reinstatement of driver's licenses, and/or deferral of support collection activity for sixty to ninety days.

- **Providing family assistance:** Paroled and released parents also want family reintegration services. Almost all of the one hundred WFC clients interviewed six months after their initial visit said they would like to spend more time with their children. Even though most clients visited the WFC only once or twice, soon after their release from prison, 16 percent used the WFC's legal services and 29 percent the mental health services to help them reconnect with their children or to deal with the other parent. In order to assist paroled and released offenders with family reconnection, release programs must offer more sustained interventions over a longer period of time to address both ex-offenders' immediate issues and the long-term concerns that arise after work and living situations stabilize. A small study on the experiences of forty-nine offenders during the first month following release found that strong family involvement was critical for all aspects of successful reintegration, including reduced drug use, finding employment, and avoiding criminal activity.[41]

## Conclusion

Child support programs, criminal justice agencies, and courts all play a critical role in the development of fair child support policies for noncustodial parents in prison and the parole system. DOC officials must begin identifying parents with child support responsibilities while they are in prison, and criminal justice agencies should include child support information in post-release plans. The CSE agency should partner with the DOC and with criminal justice agencies to create viable reintegration programs for offenders when they return to the community. Most importantly, the CSE should adopt policies that are responsive to low-income noncustodial parents, including those with a history of incarceration.

Modifications of existing protocols could amend child support guidelines and default procedures to ensure the agency does not generate orders that are unrealistic; adjust orders, including downward modification awards, so they reflect actual earnings; and forgive money owed to the state for welfare payments as an incentive for regular payment of current support. Most importantly, once the court determines that a parent is not incarcerated due to failure to pay child support, judges should ignore the prisoner's criminal conduct and focus instead on the standard measures considered in a modification request: whether the parent is able to pay child support and how the measures are affected by incarceration. Orders that are beyond a noncustodial parent's ability to pay truly are not in the best interests of the child.

## Endnotes

1. For an overview of the child support program and relevant state and federal laws, *see* OFFICE OF CHILD SUPPORT ENFORCEMENT, ADMINISTRATION FOR CHILDREN AND FAMILIES, DEPARTMENT OF HEALTH AND HUMAN SERVICES, ESSENTIALS FOR ATTORNEYS IN CHILD SUPPORT ENFORCEMENT, THIRD ED. (Aug. 2002).

2. Frank J. Wozniak, Annotation, *Loss of Income Due to Incarceration as Affecting Child Support Obligation,* 27 A.L.R. 540 ann. 5 (1995).

3. Distribution by A. J. Beck at First Reentry Courts Initiative Cluster Meeting, *State and Federal Prisoners Returning to the Community,* Washington, D.C. (2000); A. J. BECK & J. KARBERG, BUR. OF JUST. STATS., PRISON AND JAIL INMATES AT MIDYEAR 2001 NCJ 191702; T. P. BONCZAR & BUR. OF JUST. STATS., PREVALENCE OF IMPRISONMENT IN THE U.S. POPULATION, 1974–2001 NCJ 19796 (2003).

4. E. SORENSEN & C. ZIBMAN, THE URBAN INSTITUTE, TO WHAT EXTENT DO CHILDREN BENEFIT FROM CHILD SUPPORT? Discussion Paper 99-11 (2000).

5. E. SORENSEN & C. ZIBMAN, THE URBAN INSTITUTE, POOR DADS WHO DON'T PAY CHILD SUPPORT (2001); E. SORENSEN, H. KORBALL ET AL., THE URBAN INSTITUTE, EXAMINING CHILD SUPPORT ARREARS IN CALIFORNIA (2003).

6. DEP'T OF HEALTH & HUMAN SERVS., CHILD SUPPORT FOR CHILDREN ON TANF OEI-05-99-00392 (2002).

7. Sorensen and Zibman, *supra* note 4, at 9.

8. Yerkes v. Yerkes, 782 A.2d 1068 (1999), *aff'd* LEXIS 919 (Pa. Sup. Ct. May 30, 2003).

9. Rottscheit v. Dumler, 664 N.W.2d 525 (Wisc. 2003).

10. *See* Wozniak, *supra* note 2.

11. Mooney v. Brennan, 848 P.2d 1020, 1023 (Mont. 1993).

12. Bendixen v. Bendixen, 962 P.2d at 173 (Alaska 1998).

13. *See Rottscheit ,* 664 N.W2d at 18.

14. C. J. MUMOLA, BUR. OF JUST. STATS., INCARCERATED PARENTS AND THEIR CHILDREN NCJ 182335 (2000).

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